

February 8, 2007

DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Raymond W. Stephens

Date of Filing: January 18, 2007

Case Number: TFA-0185

On January 18, 2007, Raymond W. Stephens filed an appeal from a determination issued to him on December 18, 2006 by the Department of Energy's (DOE) Environmental Management Consolidated Business Center (CBC). In that determination, CBC responded to a request for documents that Mr. Stephens submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. CBC provided Mr. Stephens with some documents responsive to his request, but determined that it could not locate the remaining requested records. This appeal, if granted, would require CBC to perform an additional search and release any responsive documents or issue a new determination justifying the withholding of those documents.

I. Background

Mr. Stephens filed a request with CBC for several documents regarding a former DOE sub-contractor and its operations concerning a particular piece of equipment. *See* Letter from Jack R. Craig, CBC, to Raymond W. Stephens (December 18, 2006) (Determination Letter). In its determination letter, CBC located and provided in their entirety two of the requested documents. CBC added that a thorough search for the remaining documents was conducted, but no documents were located. *Id.* CBC outlined its search for responsive records as follows:

1. Two boxes of hard copy correspondence were recalled from the Federal Records Center and searched for specific correspondence numbers relating to the subject matter.
2. Hummingbird database was searched for any subject-related information.
3. Environmental Records Database (ERD) was searched for subject-related information.

4. Records Management Database (RMDb) was searched for subject-related information.
5. Procurement personnel were contacted. Any records that may have been responsive to this request have been destroyed in accordance with DOE Administrative Records Schedule 3: Procurement, Supply, and Grant Records. Subcontract records are retained for 6 ¼ years after subcontract is complete. No records exist based on the dates of the documents requested.

Id. Mr. Stephens filed the present appeal challenging the adequacy of the search performed by CBC. Letter from Raymond W. Stephens to OHA (January 18, 2007) (Appeal Letter). In his appeal letter, Mr. Stephens maintains that he “find[s] it very hard to believe” that CBC has “exhausted every avenue” in conducting its search. *Id.*

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted CBC to discuss the search. CBC informed us that, in responding to Mr. Stephens’ request, it performed a thorough search for documents utilizing all appropriate search terms and methods, as outlined in the determination letter. *See* Memorandum of Telephone Conversation between Simon Lipstein, CBC, and Diane DeMoura, OHA (January 30, 2007). CBC stated that it has a specific procedure for searching for records responsive to FOIA requests and that procedure was followed in processing Mr. Stephens’ request. *Id.* Contrary to Mr. Stephens’ argument, the agency is not required to exhaust every avenue, but rather must undertake a search reasonably calculated to uncover records responsive to his request. In this case, CBC searched paper records and three electronic databases. It also contacted appropriate personnel to obtain relevant information. Moreover, Mr. Stephens has not produced any evidence that the documents he seeks currently exist at CBC. Based on this information, we find that CBC performed an extensive search reasonably calculated to reveal records responsive to Mr. Stephens’ request. The search was, therefore, adequate. Accordingly, Mr. Stephens’ appeal should be denied.

It Is Therefore Ordered That:

(1) The Appeal filed on January 18, 2007, by Raymond W. Stephens, OHA Case No. TFA-0185, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
Senior FOIA Official
Office of Hearings and Appeals

Date: February 8, 2007